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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,215	12/02/2003	Larry J. Weinstein	7126CIPC3	3313

7590 07/22/2005

Johns Manville Corporation  
Intellectual Property (R21D)  
10100 West Ute Avenue  
Littleton, CO 80127

EXAMINER
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THOMAS, ALEXANDER S

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 07/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/726,215

Applicant(s)

WEINSTEIN ET AL.

Examiner

Alexander Thomas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 81-101 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 81-101 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Terminal Disclaimer***

1. The terminal disclaimers filed on 7/13/05 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6,854,369, 10/378439 and 11/032361 have been reviewed and are accepted. The terminal disclaimers have been recorded.

### ***Double Patenting***

2. Claims 82-101 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-66 of U.S. Patent No. 6,468,615. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent include all of the limitations of the instant claims.

3. Claims 82-101 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of copending Application No. 09/945202. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the application include all of the limitations of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 82-101 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No.

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6,551,677. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent include all of the limitations of the instant claims.

5. Claims 82-101 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No.

6,740,188. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art to make the product of the instant claims from the teachings of the process claims in the patent.

6. Claims 82-101 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No.

6,743,326. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent include all of the limitations of the instant claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Thomas whose telephone number is 571-272-1502. The examiner can normally be reached on 6:30-4:00 M-THUR.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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ALEXANDER S. THOMAS  
PRIMARY EXAMINER